

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

The Knit With, *a Pennsylvania Partnership*,

Plaintiff,

vs.

Knitting Fever, Inc., *a New York corporation*,

Designer Yarns, Ltd., *a corporation of England*,

Filatura Pettinata V.V.G. Di Stefano Vaccari & C.

(S.A.S.), a company of Italy,

Sion Elalouf and Diane Elalouf, *of New York*,

Jeffrey J. Denecke, Jr., *of New York*,

Jay Opperman, *of New Jersey*,

Debbie Bliss, *of England*,

Defendants.

Civil Action

No. 02: 08 - CV - 04221

Consolidated Case


STATEMENT OF COUNSEL

PLEASE TAKE NOTICE : Attached hereto for the record is a true and correct copy of correspondence to the Court dated 19 October, 2012 from counsel for Counterclaimant Plaintiff Knitting Fever, Inc. concerning dismissal without prejudice of the Knitting Fever, Inc. Counterclaim together with a true and correct copy of counsel's transmittal to the Court of said correspondence.

Respectfully Submitted,

LAW OFFICE OF JAMES F. CASALE

By:


James F. Casale, Esquire
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DATED : 22 October, 2012

Counsel for Counterclaim Defendant, The Knit With



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October 19, 2012

Via Email

Honorable Ronald L. Buckwalter
United States District Court for the Eastern
District of Pennsylvania
U.S. Courthouse
601 Market Street, Room 14614
Philadelphia, PA 19106-1755

Re: The Knit With v. Knitting Fever, Inc. et al., and
The Knit With v. Eisaku Noro & Co., Ltd., et al.
Civil Action Nos. 08-cv-4221 and 08-cv-4775 (consolidated)

Dear Judge Buckwalter:

We write with a status update regarding the above-referenced cases.¹

As we discussed at the September 24 conference, an order dismissing claims without prejudice generally is not a final and appealable order. In *Brennan v. Kulick*, 407 F.3d 603 (3d Cir. 2005), however, the Third Circuit explained that an exception to this principle exists when the applicable statute of limitations has run by the time the court orders dismissal without prejudice. In such circumstances, the order dismissing the claims without prejudice is considered a final and appealable order. *Id.* (citing *Ahmed v. Dragovich*, 297 F.3d 201 (3d Cir. 2002)).

¹ The Western District of Washington has yet to issue its rulings on summary judgment motions pending in *Cascade Yarns, Inc. v. Knitting Fever, Inc., et al.*, although it did today grant Defendants' motion to exclude Cascade's fiber expert, Mr. Kenneth Langley. KFI remains uncertain as to whether a trial will proceed as scheduled on November 5. We nevertheless provide this status report consistent with our letter of October 2, 2012, and the Court's direction of October 3, 2012.



Hon. Ronald Buckwalter
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Consistent with this holding, KFI proposes that the Court dismiss KFI's counterclaims without prejudice, provided that Mr. Casale would agree to a tolling agreement preserving KFI's right to bring its claims against The Knit With in state court in the event that The Knit With's claims against KFI are resuscitated on appeal. Our thinking is that this proposal would render the Court's orders dismissing The Knit With's claims final and appealable (because the statutes of limitation applicable to KFI's counterclaims have run), while preserving KFI's ability to assert its defamation and tortious interference claims against The Knit With (albeit in state court) in the event that The Knit With's appeal to the Third Circuit is successful.

Mindful of the Court's admonition that any issues regarding this case be presented to the Third Circuit at one time, we note Defendants' intent to seek an award of their excess costs, expenses, and attorney's fees against counsel for The Knit With under 28 U.S.C. § 1927. With the Court's permission,² Defendants could be prepared to present such a motion in accordance with a deadline set by the Court.

To the extent counsel for Defendants are not required to be in Seattle for the *Cascade v. Knitting Fever* case (our pre-trial conference is October 24, and trial is scheduled to start on November 5), we can make ourselves available at the Court's convenience if the Court desires a conference to address these issues.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Slavitt".

Joshua R. Slavitt

cc: James F. Casale

JRS/sh

² The Court previously instructed the parties not to file any additional motions without leave of Court. *See* Dkt. No. 378 at 3.

James F. Casale, Esq.

From : Harvell, Sara <harvells@pepperlaw.com>
Date : Friday, October 19, 2012 4:56 PM
To : sharon_lippi@paed.uscourts.gov <sharon_lippi@paed.uscourts.gov>
Cc : jfcasaleesq@msn.com <jfcasaleesq@msn.com>; Slavitt, Joshua R. <slavittj@pepperlaw.com>
Subject : The Knit With v. Knitting Fever, Inc. et al. - Civil Action Nos. 08-cv-4221 & 08-cv-4775
Attachments : 16984358_1.pdf (169 KB)

Ms. Lippi,

Please see the attached letter sent on behalf of Josh Slavitt.

Best regards,

Sara Harvell

Assistant to Joshua R. Slavitt

and Michael A. Patané

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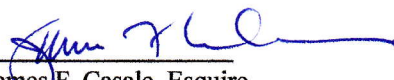
CERTIFICATE OF SERVICE

I, James F. Casale, Esquire, attorney for Counterclaim Defendant, The Knit With, hereby certify that, on the date set forth below, I caused to be filed of record with the U.S. District Court for the Eastern District of Pennsylvania, Counterclaimant's correspondence to the Court dated 19 October, 2012 concerning dismissal without prejudice of the Counterclaim of Defendant Knitting Fever, Inc. to counsel for the Counterclaim Plaintiff Knitting Fever, Inc., jointly representing Filatura Pettinata V.V.G. di Stefano Vaccari & C. (S.A.S.), Eisaku Noro & Co., Ltd., Sion Elalouf and Jay Opperman.

Respectfully Submitted,

LAW OFFICE OF JAMES F. CASALE

BY:


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DATED : 22 October, 2012

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